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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,567	10/31/2003	Thomas Grafenauer	03100135US	8419

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EXAMINER
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LAUX, JESSICA L

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 05/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/697,567	<b>Applicant(s)</b> GRAFENAUER, THOMAS	
	<b>Examiner</b> Jessica Laux	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 March 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/31/2003, 01/26/2005, 02/09, 2004</u>                                   | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

The examiner acknowledges the amendment to the specification dated 03/28/2006.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Moriau et al. (6006486).

In regards to claims 1 and 5: Moriau teaches a floor panel which is bounded in a horizontal plane by a top side, having a decorative layer, and an underside (Col. 8, lines 60-66), provided for bearing on an underlying surface, the floor panel being provided with means for releasably connecting at least two panels, wherein the connecting means are formed on at least one first side edge such that locking takes place in a transverse direction (Q) and vertical direction (V) (Col. 2, lines 13-24), and further comprising form-fitting elements for locking in the vertical direction (V) with a further panel formed on a second side edge running at an angle to the first side edge (Col. 3, lines 23-25) wherein the form-fitting elements are spaced apart from one another in the transverse direction (Q) and in the vertical (V) on two spaced-apart, essentially vertically oriented walls (reference Figures 23-25), and further comprising a tongue formed on the first side edge and extending in the longitudinal direction of the first side edge, and a

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recess corresponding to the tongue formed on an opposite side edge, wherein an underside of the tongue, starting from a tip of the tongue has a continuously curved contour (Figures 2-4).

Applicant argues that Moriau does not disclose form-fitting elements for locking the vertical direction with a further panel formed on a second side edge running at an angle to the first side edge, wherein the form-fitting elements are spaced apart from one another in the transverse direction and in the vertical direction on two spaced-apart, essentially vertically oriented walls...

Examiner disagrees. Moriau discloses in Col. 3, lines 23-25 and Col. 6, lines 36-39 that there are form-fitting elements on a second side at an angle to the first side for engaging another board. Further it is disclosed that any form of the previously described form-fitting elements may be used on the second side. Examiner refers to drawings 22-25 where Moriau discloses form-fitting elements (depicted in Figure 22 where the first element is at 9 and second element is at 6) spaced apart from one another in the transverse direction and in the vertical direction on essentially vertically oriented walls (where the end wall at 9 and the inside wall at 74 are essentially vertically oriented). The form-fitting element at 9 is locked in the vertical direction where element 85 fits under and against element 86 of another board. And the form-fitting element at 6 locks another board (underneath) in the vertical direction when wall 74 is placed above wall 73 of another board preventing vertical movement.

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In regards to claims 2 and 6: The floor panel according to claim 1, wherein a radius of curvature of the contour of the underside of the tongue is constant over at least 90 degrees (Figures 2-4, element 12).

Applicant argues that Moriau does not show that a radius of curvature of the contour of the underside of the tongue is constant over at least 90 degrees.

Examiner disagrees. 90 degrees is considered to be one quarter of a circle. Figures 2-4 clearly show the radius extending for more than one quarter of the circle. The figures depict the radius extending for half of a circle or 180 degrees.

In regards to claims 3 and 7: The floor panel according to Claim 1, wherein the recess is designed as a groove (Figures 2-4, element 10) with a top lip (Figures 2-4, where element 18 is the underside of the top lip 22) and a bottom lip (Figures 2-4 where element 14 is the top side of the bottom lip 23), in which the tongue can be latched in the transverse direction (Q).

In regards to claims 4, 8-10: The floor panel according to claim 1, further comprising a first step-like milled relief formed on the second side edge and starting from the underside (as depicted in Figure 22 on the left side), wherein the first step-like milled relief includes an inner wall (wall on the right side of element 81, at the bottom of Figure 23) on which one said form-fitting element (where element 6 extends transversely from said inner wall) extending in the transverse direction (Q) is arranged and an outer wall (at element 9, the far left wall) on which an other said form-fitting element (generally indicated at element 4 of Figure 22) extending in the transverse direction (Q) is arranged, and further comprising a second step-like milled relief formed

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on a side edge that is located opposite the second side edge, wherein the second step-like milled relief starts from the top side (as depicted in Figure 22 on the right side) and has an other inner wall (the wall at the far left of element 10 of Figure 22) and an other outer wall (Figure 22, element 73), on which are formed undercuts (Figure 22, element 10 and the undercut defined by walls 36 and 73) which correspond with the one and the other form-fitting elements, wherein the first step-like milled relief forms a shoulder which projects in a direction of the underside and has an essentially horizontally oriented head surface, and further comprising a channel (Figure 23, element 81 near element 6) formed in the head surface along a longitudinal extent in relation the second side edge.

In regards to claim 11: Moriau discloses a floor panel, comprising: a top side; an underside; a first side edge having a tongue (Figure 2, element 9); an opposite side edge having a recess corresponding to the tongue (Figure 2, element 10); a second side edge (Figure 22 on the far left) extending in a transverse direction to the first side edge (Col. 3, lines 23-25 and Col. 6, lines 36-39) and having a first relief comprising an inner wall (wall on the right side of element 81, at the bottom of Figure 23), a first form-fitting element arranged on the inner wall (where element 6 extends transversely from said inner wall), an inner shoulder wall (Figure 22, element 74), an essentially horizontally oriented head surface (where elements 6 and 74 extend transversely from the inner wall and in the horizontal direction), an outer wall (at element 9 the far left wall), and a second form-fitting element arranged on the outer wall (element 9, generally depicted at 4); and a side edge opposite the second side edge (Figure 22 on the far

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right) having a second relief comprising an other outer wall (Figure 22, element 73), a first undercut (at element 6 on the far right and defined by walls 73 and 36) corresponding to the first form-fitting element arranged on the other inner wall, an other head surface (Figure 22, element 80), a shoulder wall (Figure 22, element 83)), a base surface (Figure 22, depicted by elements 78 and 36), an other head surface (Figure 22, element 86), an other inner wall (the wall to the far left of recess 10), and a second undercut (Figure 2, element 10) corresponding to the second form fitting element arranged on the other inner wall, wherein the form-fitting element are structured and arranged to engage undercuts of a substantially identical panel.

### ***Response to Arguments***

Applicant's arguments filed 03/28/2006 have been fully considered but they are not persuasive. An explanation of reasons is in the above detailed office action.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

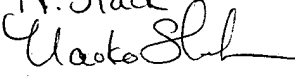
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Friday, 8:30am to 4:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JL  
04/28/2006

N. Slack  
  
Primary Examiner